IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 594

JOHN T. GOJACK,

Petitioner,

—v.—

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S REPLY TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION

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1. The issue here is not, as the Government seems to assume, whether the Committee could have had a legitimate purpose but whether, in fact, it did.

The record, for reasons stated in the Petition (pp. 18-20), precludes a deference to the formal declarations of the Committee and subcommittee to establish the legislative purpose of the hearing. In addition, the following facts—all of them uncontradicted constituents of a pattern unprecedented in litigation in this area—affirmatively establish the exposure purpose of the hearing:

(a) This was the first hearing conducted pursuant to a "new plan" under which known or suspected "subversives" would be given "a chance in the full glare of publicity" to deny charges against them or "to take shelter behind con-

stitutional amendments," so that they could be "exposed before their neighbors and fellow workers" with a view to insuring that "loyal Americans who work with them do the rest of the job." The purpose of these hearings, Chairman Walter explained, would be "to demonstrate that [the witnesses] are part of a foreign conspiracy" (Pet. p. 4).*

(b) The implementation of this new plan is reflected in the fact that the very first entry in the Committee's file dealing with this case is a decision—not to conduct a legislative investigation but to subpoena petitioner (Pet. p. 5).

(c) On the very day the Committee decided to subpoena petitioner, February 6, 1955, the Committee notified a newspaper in Fort Wayne, where petitioner's union was facing a representation election, that he would be subpoenaed (Pet. p. 6).

(d) On a second occasion, again before the issuance of a subpoena, a local newspaper in St. Joseph, Missouri, where petitioner's union was facing a representation election was "tipped off" by the Committee that a subpoena would be issued (Pet. p. 8).

(e) Prior to the hearing, the Chairman held a public session in response to a request for a postponement at which he told the press that the Committee wanted to break the

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* Mr. Walter could hardly have thought that this "new plan" had a legislative significance. On August 26, 1955, he observed, "unlike most congressional committees, in addition to the legislative function we are required to make the American people aware if possible of the extent of the infiltration of Communism in all phases of our society." U. S. News and World Report, August 26, 1955, p. 7; quoted in Judge Edgerton's dissenting opinion in *Watkins* v. *United States,* 233 F. 2d 681, 693 (App. D. C.). The Committee *knows* that its exposure objectives cannot be validly achieved through legislation (J. A. 238, 239); *Barsky* v. *United States,* 167 F. 2d 241, 256 (App. D. C., dissenting opinion).

Union "because we do not feel it is good for the United States" (Pet. pp. 6-7).

(f) The personnel manager of one plant in which a union representation election was scheduled announced three days before the subpoena was actually issued that petitioner would be subpoenaed—the same personnel manager who on an earlier occasion had obtained access to petitioner's dossier from the Committee's private files (Pet. pp. 6, 9).

(g) In one interview given to the local press before the issuance of the subpoena, Chairman Walter stated that the Committee intended to show that the petitioner and another witness connected with the Union were "card carrying Communists" and that "the rest is up to the community" (Pet. p. 9). This was plainly an implementation of the "new plan" to expose witnesses so that "loyal Americans who work with them will do the rest of the job" (Pet. p. 4).

(h) Another newspaper was told, through its Washington correspondent that the Committee was interested in breaking the union of which the witness was a leader because its continued existence was not good for the country. The substance of this objective was repeated by the chairman on the floor of Congress (Pet. p. 7).

(i) When the Chairman's exposure campaign was complained of at the hearing by motion, the subcommittee made no effort to deny the facts or disavow that its objective was exposure (Pet. pp. 12-14).

(j) The Committee had no probable cause to believe that petitioner would supply it with information. Despite Chairman Walter's announced intention to demonstrate that the witness was a "card carrying Communist," no evidence was adduced at the hearing or the trial to this effect. Mr. Tavenner's testimony at the trial shows only that the Committee

called the witness because he was an officer of the Union, but no testimony was offered that the Committee had evidence that he personally had been accused of Communism (Pet. pp. 14-17).

2. The Government's statement that this indictment is sufficient under the ruling in the *Seeger* case (Opp. 18) is incorrect. The Court of Appeals ruled not merely that it must be alleged that the subcommitee had *general* authority to investigate within the area of the Committee's jurisdiction, but explicitly that "the indictment was defective because it had failed to allege properly *the authority of the subcommittee to conduct the hearings in issue* and to set forth the basis of that authority accurately." (303 F. 2d at 481, italics added.) In *Seeger* the indictment recited a resolution of June 8th, 1965 which did not authorize the sub-committee to conduct the particular investigation and the indictment did not mention the resolution of July 27, 1965 which purported to authorize the sub-committee to proceed (303 F. 2d at 484). Similarly the indictment here merely recites a statement by the Chairman of the subcommittee at the commencement of the hearings in respect of the subject of the hearings as Communist Party activities in labor (Pet. p. 9) and the indictment does not recite any resolution authorizing the subcommittee to conduct the hearings at issue.

3. The Government has sought to answer our contentions with respect to the failure of the Committee to comply with its Rule I on the ground that the hearings were part of a "continuing investigation" by the Committee. But hearings conducted prior to the first session of the 83rd Congress could not serve as an authorization to continue the hearings into a new Congress without a fresh authoriza-

tion. It is simply not the case, as the Government seems to contend, that congressional committees investigating subversion enjoy a license to conduct marathon non-stop probes based upon vague authorizations in the remote past. Congress is not a continuing body and its powers end at the conclusion of each term. See *Jurney* v. *MacCracken*, 294 U. S. 125, 151; *Anderson* v. *Dunn*, 6 Wheat. 204, 225, 230, 231 (1821).*

Moreover, a congressional committee has no legal being until its members are elected at the commencement of the session (see Rule X of the Legislative Reorganization Act, 60 Stat. 812) and the House Rules are adopted which alone authorize it to function. Under these circumstances, it is plain that only a renewed authorization could effectively continue an investigation, uncompleted at the close of a session of Congress, and, indeed, this is the very practice followed by the Committee. See, for example, the opening statement of the 1963 Committee hearings on *Assistance to Foreign Communist Governments* (Appendix).

Respectfully submitted,

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APPENDIX

Assistance to Foreign Communist Governments

I will proceed to read this opening statement.

On March 5, 1963, the Committee on Un-American Activities met and duly adopted the following resolution:

> Whereas at a duly held meeting of the Committee on Un-American Activities held in executive session on August 2, 1962, a resolution was unanimously adopted directing that hearings by the Committee on Un-American Activities, or a subcommittee thereof, be held on such date or dates as the Chairman may designate relating to propaganda activities of members and affiliates of the Communist Party of the United States for certain legislative purposes therein set forth; and
>
> Whereas it is the desire and intention of the Committee on Un-American Activities that said hearings which were not completed during the 2d Session of the 87th Congress, proceed and continue during the 88th Congress.
>
> Now Therefore, Be It Resolved, that the hearings heretofore authorized by resolution on August 2, 1962, be continued and held by the Committee on Un-American Activities, or a subcommittee thereof, in Washington, D. C., or at such other place or places as the Chairman may determine, on such date or dates as the Chairman may designate, relating to the same subject and for the same legislative purposes as set forth in said resolution of August 2, 1962.
>
> Be It Further Resolved, that the hearings may include any other matter within the jurisdiction of the

Committee, which it, or any subcommittee thereof, appointed to conduct these hearings, may designate.

The resolution of August 2, 1962, to which I previously referred, was adopted in the preceding Congress, which I now read:

BE IT RESOLVED, that hearings by the Committee on Un-American Activities or a subcommittee thereof, be held in Washington, D. C., or at such other place or places as the Chairman may determine, on such date or dates as the Chairman may designate, relating to propaganda activities of members and affiliates of the Communist Party of the United States, for the following legislative purposes:

1. Consideration of the advisability of amending Title 22, USC, 611(c), by extending the definition of the term "Agent of a Foreign Principal" so as to remove any doubt as to what should be the true test of agency within the meaning of this Act.

2. The execution, by the administrative agencies concerned, of the Foreign Agents Registration Act and all other laws, the subject matter of which is within the jurisdiction of this Committee, the legislative purpose being to exercise continuous watchfulness of the execution of these laws, to assist the Congress in appraising the administration of such laws, and in developing such amendments or related legislation as it may deem necessary.

BE IT FURTHER RESOLVED, that the hearings may include any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct these hearings may designate.

I now offer for the record the order of appointment, by the Committee Chairman Francis E. Walter, of the subcommittee which meets today for the purpose of continuing the hearings upon the subjects and for the legislative purposes set forth in the aforesaid resolution of August 2, 1962, confirmed by the resolution of March 5, 1963:

February 26, 1963

To: Francis J. McNamara, Director
Committee on Un-American Activities

Pursuant to the provisions of the law and the rules of this Committee, I hereby appoint a subcommittee of the Committee on Un-American Activities, consisting of the Honorable Clyde Doyle as Chairman, and the Honorable Edwin E. Willis and the Honorable August E. Johansen as associate members, to conduct a hearing in Washington, D. C., on Wednesday, March 6, 1963, at 10:00 a.m., on subjects under investigation by the Committee and take such testimony on said day or succeeding days, as it may deem necessary.

Please make this action a matter of Committee record.

If any Member indicates his inability to serve, please notify me.

Given under my hand this 26th day of February, 1963.

(S) Francis E. Walter
FRANCIS E. WALTER,
Chairman, Committee on
Un-American Activities.